IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO.88 OF 1993

Ganpat Mahadeo Pawar .. Applicant.

V/s.

The State of Maharashtra .. Respondent.

Ms.Brenda D'Souza h/f Shri.M.P.Vashi for the applicant.

Shri.Y.M.Nakhwa, A.P.P. for the State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12TH DECEMBER, 2006

P.C.:

1. In the light of the earlier order passed by this Court, very brief reasons are necessary to be assigned while disposing of this application.

2. The applicant is the original accused. He is aggrieved by dismissal of Criminal Appeal No.7 of 1989 which was preferred by him against the judgement and order of conviction in STC.No.11 of 1987. The judgement and

order is passed by Judicial Magistrate F.C.,Mangalwedha on 21st January, 1988. The appellate order is dated 4th May, 1993.

3. The applicant-accused was arrested in connection with Crime No.44 of 1986. The offences alleged are punishable u/s.304(A) of the Indian Penal Code r/w. Section 116 of the Motor Vehicle Act.

4. The incident took place on 18th June, 1986. The applicant was driving a tractor trolley of H.M.T. company. Some labourers were travelling in the tractor trolley which was attached to the tractor, driven by the applicant. It is alleged that the trolley got detached from the tractor, which was driven by the applicant at the corner of a road. The labourers, who were sitting in the trolley sustained injuries. They fell down from the trolley. One of the labourers, Pandurang succumbed to the injuries in the hospital.

5. It is alleged that the applicant was driving the tractor at a very high speed. When the tractor approached a residential colony, the persons sitting in the empty trolley heard the sound from the joint pin in between the

tractor and trolley. The persons requested the applicant-Driver to stop the tractor, but he did not do so. The trolley was separated from the tractor and that is how the injuries were sustained.

6. The prosecution examined the injured witnesses and the tractor owner. However, the tractor owner turned hostile. The Panch witness and the Doctor also was examined. As far as the applicant is concerned, he did not plead guilty to the charge. However, he has not examined any witness.

7. After considering the entire material on record, the Judicial Magistrate F.C., Mangalwedha held that the applicant is guilty of the offences punishable u/s.304(A) of I.P.C. read with Sec.112 and 116 of M.V.A. He convicted him thus and sentenced him to suffer R.I. for three months and fine of Rs.300/-. He was also convicted under the offences punishable for the offences under M.V.A. and fine was imposed together with R.I. of four months. The matter was carried in appeal and the appellate court after hearing the parties so also framing the points for determination concurred with the judgement of the J.M.F.C. and that is how the present revision

application is filed in this Court.

8. This revision application was heard on 5th August, 2003 and this court was of the opinion that considering the fact that the incident took place in 1986, the conviction is of 1988, the appellate order is of 1993, no useful purpose will be served by going into further details. Instead, this Court was of the view that a report of Probation Officer, Solapur be called for. The order was passed considering the age of the applicant and the circumstances of the case. The report has been forwarded to this court. By the time, the matter was heard and report was forwarded, another three years have lapsed.

9. It is in these circumstances and bearing in mind the contents of the report, Ms.D'Souza submits that benefit of Sec.4 (1) of Probation of Offenders Act, 1958 be extended to the applicant in this behalf. She placed her reliance upon the decisions of Supreme Court reported in 1995 Supp.(2) SCC 385 and Emperor v/s.Khan Mahomed Shermahomed in 38 Cr.LJ 660 (Bom), she submits that the conduct after the accident is also a relevant factor. For extension of the benefit of the Probation of Offenders

Act, entire circumstances must be taken into account.

10. Shri.Nakhwa, learned A.P.P. for the State submits that considering the contents of the report forwarded by District Probation Officer, appropriate orders be passed by this Court.

11. Section 4(1) of the Probation of Offenders Act, 1958 reads thus : -

> "When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with

> or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour."

12. It is not disputed before me that this power can be exercised even by this court. In the present case, the District Probation Officer, Solapur is an appropriate authority. He has forwarded his Confidential Report (C.R.). The report indicates that questionnaire prepared and the answers which were sought, has been satisfactorily answered. All details pertaining to the age, character, conduct of the applicant-accused are set out therein. It has been pointed out that the applicant has no enemy. He is a poor farm labourer. He has no property but works on the field and earns daily wages. That is the only source of income for him and his family. The applicant has guilt in his mind in so far as the incident is concerned. He has shown genuine remorse and does not justify the same. However, the report concludes that taking into account the totality of the circumstances and relevant details pertaining to the applicant, this court should exercise its power under the Probation of Offenders Act, 1958.

13. It is in the peculiar facts and circumstances and taking into consideration the contents of the report that the benefit of the Act is extended to the present applicant. The orders holding the applicant guilty of the offences punishable as above is not interfered with based as they are on concurrent findings of facts. However, in so far as the sentence is concerned, taking into account the report and the time which has been spent during the course of the proceedings, the benefit u/s.4(1) is extended to the applicant. Accordingly, the following order : -

a) The applicant is released on Probation of good conduct.

b) The applicant shall execute a bond without surety but on his personal undertaking as stipulated u/s.4(1) of the Probation of Offenders Act, 1958.

c) The applicant shall execute a bond in the above terms and undertake to keep peace and good behaviour. The bond shall be executed within a

period of two weeks from today and shall remain in force for a period of one year from today.

14. This order is passed because the applicant has clearly pointed out that he resides at the address mentioned in the report of the Probation Officer and shall continue to reside thereat. In case, he has to shift his residence, he shall do so with prior intimation to the concerned Probation Officer so also the local police station.

15. The application is disposed of in the above terms.

(S.C.Dharmadhikari, J.)